

Law Clerk Hiring by Federal Appellate Judges

Summary

Federal appellate judges have agreed by a substantial consensus to abide by an arrangement in which the focus of law clerk hiring will be on third year law students and law graduates. To facilitate this new arrangement, there will be a moratorium on law clerk hiring during the Fall of 2002, save for those judges who have yet to hire law clerks for the 2003-2004 term. Under the new arrangement:

- The judges agree that the hiring of law clerks in the Fall after the first year of law school is an unacceptable practice. The judges therefore agree that the hiring of law clerks will be done no sooner than the Fall of the third year of law school.
- Beginning in 2002, law schools and law faculty members will discourage law students from submitting applications for clerkship positions before the Fall of the third year of law school. The law schools will do nothing to facilitate the release of official transcripts and they will discourage faculty members from sending letters of reference or making calls on behalf of law clerk applicants before the Fall of the third year of law school.

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Background

During the past few years, many federal judges have interviewed and extended offers to law students in the Fall of their second year for clerkships commencing almost two years after the date of selection. Thus, for example, second year law students hired in the Fall of 2001 will not begin their clerkships until the Summer or Fall of 2003.

Because hiring has been completed so far in advance of the actual clerkship, judges have been forced to rely primarily on students' first year grades in assessing clerkship applicants. Law faculty recommendations have not been terribly useful in this hiring process, because few students are well known to faculty members after only one year of law school. Writing samples are similarly unhelpful, because law students normally do not take any seminar courses or do any law journal work during their first year of law school. Thus, very little is known about a law student after only one year of law school, save for the student's first year grades.

There are numerous advantages to a law clerk hiring system that focuses on third year students and law graduates. Law clerk candidates will be able to present more information with their applications and be judged more fairly. Thus, for example, applicants who are in their third year of law school will be able to offer

- a transcript showing performance during four semesters of school in a good variety of courses;
- information on law journal selection, journal publications, and election to a journal editorial board;
- writing samples from seminar courses;
- information regarding experience gained in clinical courses and public interest endeavors;
- references from law professors for whom the student has worked as a research assistant or a teaching assistant;
- recommendations associated with judicial internships;
- significant recommendations from Summer employers;
- information on moot court competitions; and
- information on selection or election to positions in student government.

Many judges, law school deans and faculty members, and law students now agree that the existing law clerk hiring practices are irrational, unfair, and entirely indefensible. Apart from the claim by some judges that they should be free to do as they please in their law clerk hiring, no good reason has been offered to justify hiring law students in the Fall of their second year for clerkships commencing almost two years after the date of selection. And no good reason has been offered against an alternative arrangement which would forestall clerk hiring decisions until the Fall of the third year of law school.

The one good thing about the current situation is that it affords an easy solution to the existing problem. In order to switch from the current system, which focuses on second year law students, to a hiring system that focuses on third year law students and law graduates, judges need only abstain from clerk hiring in the Fall of 2002 and resume again in the Fall of 2003. The one-year moratorium during the Fall of 2002 will hurt no one. Any law student who might have applied for a clerkship in 2002 will be free to apply during the following year. And it is doubtful that anyone will rue the loss of the "clerk hiring season" for one year.

In recent months, great efforts have been made to reform the system of law clerk hiring. After much discussion, appellate judges have agreed by a substantial consensus to abide by an arrangement in which the focus of law clerk hiring will be on third year law students and law graduates. This new arrangement will be initiated by means of the aforementioned moratorium on hiring in the Fall of 2002. The President of the American Law Deans Association and the Executive Director of the Association of American Law Schools, along with Deans from numerous law schools around the country, have supported this proposal.

We are convinced that this is a good solution to an old and thorny problem.

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